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CRAVATH, SWAINE & MOORE ~~INTERSTATE COMMERCE COMMISSION~~

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RECORDATION NO. [REDACTED] Filed & Recorded

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~~INTERSTATE COMMERCE COMMISSION~~

RECORDATION NO. [REDACTED] Filed & Recorded

JUL 19 1978 8 44 AM

July 19, 1978

~~INTERSTATE COMMERCE COMMISSION~~~~INTERSTATE COMMERCE COMMISSION~~ Consolidated Rail Corporation
Lease Financing Dated as of May 15, 1978
10% Conditional Sale Indebtedness Due 1989

8-200A920

JUL 19 1978

Date [REDACTED]

Fee \$ 100

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Consolidated Rail Corporation for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of May 15, 1978, between First Pennsylvania Bank N.A., as trustee, vendee, and Shenandoah Virginia Corporation, as builder, vendor.

(b) Agreement and Assignment dated as of May 15, 1978, between Shenandoah Virginia Corporation, as builder, and Continental Illinois National Bank and Trust Company of Chicago, as Agent, assignee.

2(a) Lease of Railroad Equipment dated as of May 15, 1978, between Consolidated Rail Corporation, as lessee, and First Pennsylvania Bank N.A., as trustee, lessor;

(b) Assignment of Lease and Agreement dated as of May 15, 1978, between First Pennsylvania Bank N.A., as trustee, lessor, vendee and Continental Illinois National Bank and Trust Company of Chicago, as Agent, vendor.

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FEE OPERATION BR.
I.C.C.

Counterparts - Guide Zone

The names and addresses of the parties to the
aforementioned agreements are:

Trustee-Vendee-Lessor:

First Pennsylvania Bank N.A.,
1500 Chestnut Street,
Philadelphia, Pennsylvania 19104.

Builder-Vendor:

Shenandoah Virginia Corporation,
8 North Jefferson Street,
Roanoke, Virginia 24042.

Lessee:

Consolidated Rail Corporation,
1310 Six Penn Center Plaza,
Philadelphia, Pennsylvania 19104.

Agent-Assignee-Vendor:

Continental Illinois National Bank and
Trust Company of Chicago,
231 South LaSalle Street,
Chicago, Illinois 60693.

Please file and record the documents referred to
in this letter and cross-index them under the names of the
Trustee-Vendee-Lessor, Builder-Vendor, Lessee and Agent-Assignee-
Vendor.

The equipment covered by the aforementioned
documents consists of 332 100-ton open top hopper cars bearing
identifying numbers CR 486969 to CR 487300, both inclusive.

Enclosed is a check for \$100 payable to the
Interstate Commerce Commission, representing the fee for
recording the Conditional Sale Agreement and related
Agreement and Assignment (together constituting one document)
and the Lease of Railroad Equipment, and related Assignment
of Lease and Agreement (together constituting one document).

Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



David C. Spialter
As Agent for Consolidated
Rail Corporation

Robert L. Oswald, Esq.,
Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

54A

BY HAND

9585-B
RECORDATION NO. _____ Filed & Recorded

JUL 10 1978 - 8 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of May 15, 1978

between

CONSOLIDATED RAIL CORPORATION

and

FIRST PENNSYLVANIA BANK N.A., as Trustee

Lease of Railroad Equipment

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Schedule I--Schedule of Equipment

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LEASE OF RAILROAD EQUIPMENT dated as of May 15, 1978, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and FIRST PENNSYLVANIA BANK N.A., a national banking association, as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Pocahontas Kentucky Corporation (the "Owner").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Shenandoah Virginia Corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (the "Equipment");

WHEREAS the Builder is assigning its interests in the CSA to Continental Illinois National Bank and Trust Company of Chicago, acting as Agent (together with its successors and assigns, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Owner, the Lessor, the Vendor and the parties named in Schedule A thereto;

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease; the Lessee's obligations hereunder shall be absolute and unconditional, and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor

or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, any prohibition or restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Prior to delivery of a Unit, representatives of both the Owner and the Lessee shall jointly inspect such Unit at the Builder's plant specified in Schedule I hereto, and if such Unit is found to be acceptable, such inspectors or an authorized representative of the Lessee shall execute and deliver to the Lessor a certificate of inspection (the "Certificate of Inspection"), stating that such Unit has been inspected and conforms to the Specifications (as defined in Article 2 of the CSA) requirements and standards applicable thereto, whereupon the Lessor will cause such Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the CSA. Upon such delivery, the Lessee shall accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance

and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease two interim and 30 consecutive semiannual payments in arrears. The interim payments for each Unit subject to this Lease are payable on October 2, 1978, and January 15, 1979, and shall be in an amount equal to the product of the Purchase Price (as defined in the CSA) for such Unit multiplied by .027398% for each day elapsed from and including the Closing Date (as defined in the CSA) for such Unit under the CSA to but not including the applicable interim payment date, less any amount in respect of interim rent previously paid. The 30 semiannual payments are payable on January 15 and July 15 in each year, commencing July 15, 1979, to and including January 15, 1994, as follows: the first five such payments shall be in an amount equal to 6.36667% of the Purchase Price of each such Unit then subject to this Lease, the second five such payments shall be in an amount equal to 5.70000% of the Purchase Price of each such Unit then subject to this Lease, the third five such payments shall be in an amount equal to 5.03334% of the Purchase Price of each such Unit then subject to this Lease and the next 15 such payments shall each be in an amount equal to 3.61667% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (i) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any investment deficiency payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement plus an amount equal to any amount payable by the Lessor in respect of interest on any Surplus Deposit pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement, and (ii) on October 2, 1978, and January 15, 1979, an amount equal to any amount payable by the Lessor in respect of interim interest pursuant to clause (b) of the final paragraph of Paragraph 8 of the Participation Agreement.

The rental payments hereinbefore set forth are sub-

ject to adjustment pursuant to § 16 hereof.

If any rental payment date referred to above is not a business day the rental otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding payments due to the Lessor by reason of § 16 hereof if and to the extent provided in any assignment of this Lease to the Vendor, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Chicago time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 14 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent (as defined in the CSA) and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease

Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned by a Bank or Trust Company under a Security Agreement Filed under Interstate Commerce Act, Section 20c and Leased under a Lease Deposited under Section 86 of the Railway Act of Canada", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change or permit to be changed the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Owner for collection or other charges and will be free of expense to the Lessor and the Owner with respect to the amount of any

local, state, Federal, or foreign taxes (other than any United States Federal income tax payable by the Owner in consequence of the receipt of payments provided for herein and, to the extent that the Owner receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Owner has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the CSA, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor or the Owner by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the Owner or the interest of the Lessor or the Owner or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor or the Owner hereunder or the Lessor, the Owner or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the

Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative tax provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the CSA.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units, as shall be satisfactory to them or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to them within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to them.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such action unless the Lessee shall first have indemnified the

Lessor for all liabilities and expenses which may be entailed therein. The Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee agrees that, at the Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, or permanently rendered unfit for use from any cause other than obsolescence, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of the CSA (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have

been returned in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term thereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 20% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, has made any payments required by § 6 or § 16 hereof and no Event of Default or event which after notice or lapse of time or both would have become an Event of Default shall have occurred and be con-

tinuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts, with such carriers and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads.

If the Casualty Value at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to such Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof, and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports

required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. In the event the Lessee may be prohibited by law or is impaired from asserting and enforcing, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, any claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA, the Lessor shall, upon request and at the sole cost and expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to assert and enforce such claims and rights. The Lessor shall not be obligated to take any such action unless the Lessee shall first have indemnified the Lessor against all liabilities and expenses which may be entailed therein, and the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the

use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the U.S. Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Lessor and Vendor at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or § 14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold

harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the CSA, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the CSA Indebtedness (as defined in the CSA) and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article of material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not

developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the CSA.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

(a) default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for ten business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten business days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding the same;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement continuing for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent (as defined in the CSA) shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, sell, operate, lease to others and enjoy the same free from any right of the Lessee to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other

costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives (i) any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law and (ii) any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor and the Vendor promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any

supplies, services and aids and any available trackage and other facilities of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall give prompt telegraphic notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be placed upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store the Equipment on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause such Units to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of

termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as no Event of Default or event which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing, and the Lessee shall have fully complied with all other provisions of this § 12, the Lessee shall be entitled to the possession and use of the Units on its own lines of railroad or lines over which it has trackage rights, and upon connecting and other carriers but only in the usual interchange of traffic in the continental United States and Canada, and only upon and subject to all the terms and conditions of this Lease; but the Lessee shall not, except with the Lessor's prior written consent, sublease, assign, or otherwise make any disposition of the right to possession and use of the Units.

The Lessee, at its own expense, will as soon as

possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance created by the Lessor, the Owner or the Vendor or resulting from claims against the Lessor, the Owner or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the CSA.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Right of First Refusal.
The Lessor intends to retain the units for release at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months nor more than nine months prior to the end of the original term or the first extended term of this Lease elect to extend the term of

this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional five year period commencing on the scheduled expiration of the original term or the first extended term of this Lease, as the case may be. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental" (as such term is defined in this § 13) payable semiannually in arrears, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such Fair Market Rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his appointment. If the parties shall have appointed a single appraiser the determination of the single appraiser appointed shall be final. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure

shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not earlier been terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Units to third parties at the expiration of the original or any extended term of this Lease, and the Lessee has not elected a further extension, the Lessee shall be given written notice of such intention 45 days prior to the expiration of such term. In the event the Lessor shall receive, prior to removal of the Units at the end of such term, a bona fide offer in writing from another party unrelated to the Lessor to purchase the Units and the Lessor elects to sell the Units pursuant to such offer, the Lessor shall give written notice to the Lessee of such offer, including the price and terms and conditions of payment. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party. The Lessee shall exercise such purchase right by delivery to the Lessor of a written notice within 10 business days of receipt of notice from the Lessor, and the Lessee's notice shall specify a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor or (ii) 90 days after expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent prorated at the same rate as paid for the last six months of such term) shall be further extended upon the same terms and conditions until the date of purchase.

Upon payment of the purchase price of the Units by the Lessee as provided in the preceding paragraph, the Lessee shall have no further liability or obligation of any kind whatsoever (except for indemnities or payments for events arising or relating to the period before such purchase) under or pertaining to this Lease or other documents and agreements pertaining hereto, and the Lessor shall forthwith execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representation or warranty, except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, sufficient to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. Return of Units upon Expiration of Lease Term. On or prior to the termination of the term of this Lease or as soon as practicable on or after the termination otherwise than pursuant to § 10 hereof of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, cause each Unit to be transported to such point or points on the Lessee's lines as shall be reasonably designated by the Lessor immediately prior to such termination, or in the absence of such designation, as the Lessee may select, and store each Unit for a period not exceeding 60 days from the date on which all of such Units are first placed in storage pursuant to this Section 14; the assembly, delivery, storage and transporting of each Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional act of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence, and after any Unit has been stored for 60 days, any further storage of such Unit shall be at the Lessor's own risk and expense, except for cost or loss arising from the Lessee's negligent or intentional acts or omissions. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be

the property of the Lessor. In the event that by the 60th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Lessor, caused all the Units to be transported to such point or points as shall have been designated by the Lessor pursuant to this § 14, the Lessee shall pay to the Lessor applicable per diem on all Units not so assembled for each day thereafter.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes. This Lease has been entered into on the assumption that the Federal rate of taxable income of corporations in excess of \$50,000 will be 48% and that the Owner, as the beneficial owner of the Units for Federal income tax purposes, shall be entitled (A) to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), and state and local taxing statutes to an owner of property, including without limitation, (i) deductions for depreciation (calculated on the assumption that the Units will be placed in service in the half of the Owner's taxable

year during which the Units become subject to the Lease) with respect to the basis of the Units under Section 167(g) of the Code, which basis shall be at least equal to the actual cost thereof, which shall include only such items as may properly be included in such cost under the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission in effect at the time in question, or the accounting rules of such other governmental authority having jurisdiction over the accounts of the Owner, or, to the extent not determined thereby or, in case no such accounting rules of the Interstate Commerce Commission or other authority are in effect at the time, sound accounting practice (the "Cost"), using the modified half-year convention and computed on the basis of the double-declining balance method of depreciation authorized by Section 167(b)(2) of the Code, switching to the sum-of-the-years-digits method of depreciation authorized by Section 167(b)(3) of the Code when most beneficial to the Owner and without obtaining the prior consent of the Commissioner of Internal Revenue, over an asset depreciation period of 12 years, to a net salvage value of zero after the reduction permitted by Section 167(f)(1) of the Code (the "ADR Deduction"), (ii) deductions for interest payable under the CSA under Section 163 of the Code (the "Interest Deduction") and (iii) the investment credit in the year in which the Units become subject to the Lease pursuant to Section 38 of the Code for "new section 38 property" equal to at least 10% of the Cost of the Units (the "Investment Credit") and (B) to treat each item of income, deduction and credit with respect to the Units and the transactions contemplated by this Lease as derived from, or allocable to, sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing assumptions and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof.

If under any circumstances or for any reason whatsoever, the Owner shall not have, shall lose the right to claim (including a good faith determination based upon the advice of tax counsel that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture all or any portion of the ADR Deduction, the Interest

Deduction, or the Investment Credit, or if the Owner, in computing its taxable income for Federal income tax purposes, shall not have, shall lose the right to claim (including a good faith determination based upon advice of tax counsel that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture an amount of foreign tax credit which would have been allowable to Lessor if it had not participated in the transactions contemplated by this Lease ("Foreign Tax Credit") (any such event being hereinafter called a "Loss"), then the Lessee shall pay to the Owner as additional rent under this Lease such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state and local income taxes, interest, penalties and additions to tax payable by the Owner from time to time as a result of any such Loss. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (ii) the payment of additional tax that becomes due as the result of the Loss. Notwithstanding anything to the contrary set forth in this paragraph, no amounts shall be paid by the Lessee to the Owner in respect of any Loss solely attributable to one or more of the following: (i) the adjustment by any taxing authority of the basis of the Units to the extent that such adjustment does not reduce such basis below the Cost; (ii) the failure of any Unit to be new property by reason of the failure of "the original use" (within the meaning of Section 48(b) or 167(c)(2) of the Code) of such Unit to commence with the Lessor; (iii) a voluntary disposition by the Owner of its interest in the Units (other than pursuant to an assignment to the Agent) except after an event of default hereunder; (iv) the failure of the Owner or any of its Affiliates to claim, unless it or they shall have received an opinion of tax counsel that they are not entitled to claim, or to have sufficient income or income tax liability against which to claim or credit, the ADR Deduction, the Interest Deduction, or the Investment Credit; (v) a Casualty Occurrence if the Lessee shall have paid the Casualty Value but only to the extent that tax indemnification payments have been included in the Casualty Value; (vi) any other act or omission of the Owner with respect to the Units prior to their acceptance by the Lessee for which the Lessee is not

responsible causing a Loss; (vii) any change in law having an effective date (whether or not retroactive) subsequent to the delivery date of the last Unit under this Lease.

If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which the Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonably detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Owner shall promptly request from Messrs. Cravath, Swaine & Moore or such other independent tax counsel as may be selected by the Owner and approved by the Lessee (the "Special Tax Counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Owner receives within 30 days after such notice a written request to do so from the Lessee, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of any intermediate appellate court, the Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its sole discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to it for any Loss that results from an adverse determination with respect to the proposed adjustment and shall have agreed to pay to the

Owner on demand all reasonable out-of-pocket costs and expenses, including, without limitation, attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, the Lessee shall pay to the Owner on demand an amount which, after deduction of all taxes required to be paid in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the amount of such taxes and interest, penalties and additions to tax thereon which the Owner shall have paid, and if the Owner subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Owner from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph, the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that the Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

If at any time the Owner determines that it is required by the Internal Revenue Service or any state, local or foreign taxing authority to include in its gross income an amount in respect of any replacement, improvement or addition made to a Unit or any expenditure or action made or taken by the Lessee pursuant to this Lease or otherwise ("Capital Expenditures"), then the Lessee shall pay to the Owner, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by the Owner under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state, local and foreign income taxes, interest, penalties and additions to tax payable by the Owner from time to time as a result of such Capital Expenditures. The amount payable to the Owner shall be paid within 30 days after receipt of the written demand therefor accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable (but not prior to the payment of the additional Federal, state, local or foreign income tax which becomes due as a result of said inclusion).

Whenever it is necessary under this § 16 to compute the amount of any tax liability of the Owner for purposes of calculating any amounts payable to the Owner by the Lessee, such computation shall be based on the assumption that such tax is payable at the highest statutory rate in respect of such tax applicable to the taxable year to which such tax liability relates.

For purposes of this § 16, the term "Owner" shall include any member of an affiliated group of which the Owner is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for Federal, state or local income tax purposes.

Without limiting the effect of any other provision of this indemnity, if there is any amendment to, or change in, the Code or any Regulation thereunder or any published ruling or other document of the Treasury or the Internal Revenue Service which is enacted or adopted on or prior to the commencement of the term of this Lease with respect to any Unit and if such amendment or change reduces the amount of Investment Credit allowable with respect to any Unit or the ADR Deduction allowable with respect to any Unit or the privilege of the Owner to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or if such amendment or change affects the Federal rate of tax on taxable income of corporations, then the amounts of rentals and the Casualty Values under this Lease will be appropriately adjusted so that the Owner's return on investment shall not be less than the return on investment that would have been realized by the Owner if such amendment or change had not occurred.

The obligations and liabilities of the Lessee arising under this § 16 shall continue in full force and effect, notwithstanding the expiration or early termination of this Lease, until all such obligations have been met and such liabilities have been paid in full.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to 11% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 1500 Chestnut Street, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Department, with copies to the Owner at 8 North Jefferson Street, Roanoke, Virginia 24042, Attention of Vice President-Finance; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President and Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 231 South La Salle Street, Chicago, Illinois 60693, attention of

Corporate
Trust
Department.

19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Trust Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Governmental Guarantees; Waiver of Priority. In the event the United States of America or any political subdivision thereof or any agency or instrumentality of any of the foregoing shall use or permit to be used its credit, directly or indirectly, to pay, guarantee or otherwise support the Lessee's obligation to pay the purchase price of or rent for, or to so support any other financing arrangements for the acquisition of, any rolling stock used by the Lessee (other than any such support obtained prior to the first use by the Lessee of and in order to induce any person to provide

unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or

any such rolling stock) the Lessee shall cause to be provided for the benefit of the Lessor, the Vendor and their successors and assigns a guarantee of or other comparable commitment with respect to the Lessee's obligations under this Lease from the same entity whose credit supports such other financing arrangements, such guarantee or commitment to be provided at the same time as such other rolling stock financing arrangement becomes entitled to such protection, so that the Lessor shall at all times have the benefit of the most favorable form of governmental support for financing of rolling stock used by the Lessee as is available to any other person with respect to rolling stock used by the Lessee subject to the limitations set forth above.

If at any time the Lessee shall, directly or indirectly, obtain any waiver (or its equivalent) of any priority status claim assertable by or on behalf of the United States of America or the United States Railway Association which benefits any obligee of the Lessee other than the Lessor, the Lessee shall cause all amounts payable by it hereunder and under the Lease to be entitled to the same waiver (or its equivalent). It is understood that Federal legislation shall not be deemed to be a waiver (or its equivalent) within the meaning of the foregoing sentence.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 23. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of

the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

§ 24. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Pennsylvania Bank N.A., or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence, or against the Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 25. Immunities. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION,

by

Vice President and Treasurer

[Corporate Seal]

Attest:

Assistant Secretary

FIRST PENNSLVANIA BANK N.A.,
as Trustee,

by

J.P. Roman
Assistant Vice President

[Seal]

Attest:

Thomas A. O'Connell
Assistant Secretary

THOMAS A. O'CONNELL

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF PHILADELPHIA,)

On this day of 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President and Treasurer of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

 Notary Public

[Notarial Seal]

My Commission expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
 COUNTY OF PHILADELPHIA,)

On this 14th day of July 1978, before me, personally appeared OP Dorian, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of FIRST PENNSYLVANIA BANK N.A., that the seal affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Lynn M. Attarian
 Notary Public

[Notarial Seal]

My Commission expires

LYNN M. ATTARIAN
 Notary Public, Phila., Phila. Co.
 My Commission Expires May 3, 1982

SCHEDULE 1 TO LEASE

Type	Builder's Specifi- cations	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
100-ton open-top hopper cars (Conrail General Specification 1727-C, as revised) AAR Mechanical Designation: HT	Norfolk & Western Class H-12	Roanoke, Virginia	332	CR 486969 to CR 487300	\$30,000	\$9,960,000	July- September 1978 Hagerstown, Maryland

SCHEDULE 2 TO LEASE
CASUALTY VALUES

<u>Rent Payments</u>	<u>Percentage of Purchase Price</u>
Interim Rent Dates	100.000000
No. 1	96.353333
No. 2	92.710000
No. 3	89.066667
No. 4	85.420000
No. 5	81.776667
No. 6	78.513333
No. 7	75.250000
No. 8	71.986667
No. 9	68.723333
No. 10	65.463333
No. 11	62.580000
No. 12	59.700000
No. 13	56.816667
No. 14	53.936667
No. 15	51.056667
No. 16	48.983333
No. 17	46.913333
No. 18	44.843333
No. 19	42.773333
No. 20	40.703333
No. 21	38.633333
No. 22	36.563333
No. 23	34.493333
No. 24	32.423333
No. 25	30.353333
No. 26	28.280000
No. 27	26.210000
No. 28	24.143333
No. 29	22.070000
No. 30	20.000000